

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 500

To amend the Truth in Lending Act to establish a national usury rate  
for consumer credit transactions.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2009

Mr. DURBIN introduced the following bill; which was read twice and referred  
to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act to establish a national  
usury rate for consumer credit transactions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Protecting Consumers  
5       from Unreasonable Credit Rates Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) attempts have been made to prohibit usu-  
9       rious interest rates in America since colonial times;

1           (2) at the State level, 15 states and the District  
2 of Columbia have enacted broadly applicable usury  
3 laws that protect borrowers from high-cost payday  
4 loans and many other forms of credit, while 34  
5 states and the District of Columbia have limited an-  
6 nual interest rates to 36 percent or less for 1 or  
7 more types of consumer credit;

8           (3) at the Federal level, in 2006, Congress en-  
9 acted a Federal 36 percent annualized usury cap for  
10 service members and their families for covered credit  
11 products, as defined by the Department of Defense,  
12 which curbed payday, car title, and tax refund lend-  
13 ing around military bases;

14           (4) notwithstanding such attempts to curb  
15 predatory lending, high-cost lending persists in all  
16 50 States due to loopholes in State laws, safe harbor  
17 laws for specific forms of credit, and the exportation  
18 of unregulated interest rates permitted by preemp-  
19 tion;

20           (5) due to the lack of a comprehensive Federal  
21 usury cap, consumers annually pay approximately  
22 \$17,500,000,000 for high-cost overdraft loans, as  
23 much as \$8,600,000,000 for storefront and online  
24 payday loans, and nearly \$900,000,000 for tax re-  
25 fund anticipation loans;

1           (6) cash-strapped consumers pay on average  
 2           400 percent annual interest for payday loans, 300  
 3           percent annual interest for car title loans, up to  
 4           3,500 percent for bank overdraft loans, 50 to 500  
 5           percent annual interest for loans secured by ex-  
 6           pected tax refunds, and higher than 50 percent an-  
 7           nual percentage interest for credit cards that charge  
 8           junk fees;

9           (7) a national maximum interest rate that in-  
 10          cludes all forms of fees and closes all loopholes is  
 11          necessary to eliminate such predatory lending; and

12          (8) alternatives to predatory lending that en-  
 13          courage small dollar loans with minimal or no fees,  
 14          installment payment schedules, and affordable re-  
 15          payment periods should be encouraged.

16 **SEC. 3. NATIONAL MAXIMUM INTEREST RATE.**

17          The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
 18          is amended by adding at the end the following:

19 **“SEC. 141. MAXIMUM RATES OF INTEREST.**

20          “(a) IN GENERAL.—Notwithstanding any other pro-  
 21          vision of law, no creditor may make an extension of credit  
 22          to a consumer with respect to which the fee and interest  
 23          rate, as defined in subsection (b), exceeds 36 percent.

24          “(b) FEE AND INTEREST RATE DEFINED.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the fee and interest rate includes all charges  
3           payable, directly or indirectly, incident to, ancillary  
4           to, or as a condition of the extension of credit, in-  
5           cluding—

6                   “(A) any payment compensating a creditor  
7                   or prospective creditor for—

8                           “(i) an extension of credit or making  
9                           available a line of credit, such as fees con-  
10                           nected with credit extension or availability  
11                           such as numerical periodic rates, annual  
12                           fees, cash advance fees, and membership  
13                           fees; or

14                           “(ii) any fees for default or breach by  
15                           a borrower of a condition upon which cred-  
16                           it was extended, such as late fees, creditor-  
17                           imposed not sufficient funds fees charged  
18                           when a borrower tenders payment on a  
19                           debt with a check drawn on insufficient  
20                           funds, overdraft fees, and over limit fees;

21                   “(B) all fees which constitute a finance  
22                   charge, as defined by rules of the Board in ac-  
23                   cordance with this title;

24                   “(C) credit insurance premiums, whether  
25                   optional or required; and

1           “(D) all charges and costs for ancillary  
2 products sold in connection with or incidental to  
3 the credit transaction.

4           “(2) TOLERANCES.—

5           “(A) IN GENERAL.—With respect to a  
6 credit obligation that is payable in at least 3  
7 fully amortizing installments over at least 90  
8 days, the term ‘fee and interest rate’ does not  
9 include—

10           “(i) application or participation fees  
11 that in total do not exceed the greater of  
12 \$30 or, if there is a limit to the credit line,  
13 5 percent of the credit limit, up to \$120,  
14 if—

15           “(I) such fees are excludable  
16 from the finance charge pursuant to  
17 section 106 and regulations issued  
18 thereunder;

19           “(II) such fees cover all credit  
20 extended or renewed by the creditor  
21 for 12 months; and

22           “(III) the minimum amount of  
23 credit extended or available on a cred-  
24 it line is equal to \$300 or more;

1           “(ii) a late fee charged as authorized  
2           by State law and by the agreement that  
3           does not exceed either \$20 per late pay-  
4           ment or \$20 per month; or

5           “(iii) a creditor-imposed not sufficient  
6           funds fee charged when a borrower tenders  
7           payment on a debt with a check drawn on  
8           insufficient funds that does not exceed  
9           \$15.

10          “(B) ADJUSTMENTS FOR INFLATION.—

11          The Board may adjust the amounts of the tol-  
12          erances established under this paragraph for in-  
13          flation over time, consistent with the primary  
14          goals of protecting consumers and ensuring  
15          that the 36 percent fee and interest rate limita-  
16          tion is not circumvented.

17          “(c) CALCULATIONS.—

18          “(1) OPEN END CREDIT PLANS.—For an open  
19          end credit plan—

20                 “(A) the fee and interest rate shall be cal-  
21                 culated each month, based upon the sum of all  
22                 fees and finance charges described in subsection  
23                 (b) charged by the creditor during the pre-  
24                 ceding 1-year period, divided by the average  
25                 daily balance; and

1           “(B) if the credit account has been open  
2           less than 1 year, the fee and interest rate shall  
3           be calculated based upon the total of all fees  
4           and finance charges described in subsection  
5           (b)(1) charged by the creditor since the plan  
6           was opened, divided by the average daily bal-  
7           ance, and multiplied by the quotient of 12 di-  
8           vided by the number of full months that the  
9           credit plan has been in existence.

10           “(2) OTHER CREDIT PLANS.—For purposes of  
11           this section, in calculating the fee and interest rate,  
12           the Board shall require the method of calculation of  
13           annual percentage rate specified in section  
14           107(a)(1), except that the amount referred to in  
15           that section 107(a)(1) as the ‘finance charge’ shall  
16           include all fees, charges, and payments described in  
17           subsection (b)(1).

18           “(3) ADJUSTMENTS AUTHORIZED.—The Board  
19           may make adjustments to the calculations in para-  
20           graphs (1) and (2), but the primary goals of such  
21           adjustment shall be to protect consumers and to en-  
22           sure that the 36 percent fee and interest rate limita-  
23           tion is not circumvented.

24           “(d) DEFINITION OF CREDITOR.—As used in this  
25           section, the term ‘creditor’ has the same meaning as in

1 section 702(e) of the Equal Credit Opportunity Act (15  
2 U.S.C. 1691a(e)).

3 “(e) NO EXEMPTIONS PERMITTED.—The exemption  
4 authority of the Board under section 105 shall not apply  
5 to the rates established under this section or the disclosure  
6 requirements under section 127(b)(6).

7 “(f) DISCLOSURE OF FEE AND INTEREST RATE FOR  
8 CREDIT OTHER THAN OPEN END CREDIT PLANS.—In  
9 addition to the disclosure requirements under section  
10 127(b)(6), the Board may prescribe regulations requiring  
11 disclosure of the fee and interest rate established under  
12 this section in addition to or instead of annual percentage  
13 rate disclosures otherwise required under this title.

14 “(g) RELATION TO STATE LAW.—Nothing in this  
15 section may be construed to preempt any provision of  
16 State law that provides greater protection to consumers  
17 than is provided in this section.

18 “(h) CIVIL LIABILITY AND ENFORCEMENT.—In addi-  
19 tion to remedies available to the consumer under section  
20 130(a), any payment compensating a creditor or prospec-  
21 tive creditor, to the extent that such payment is a trans-  
22 action made in violation of this section, shall be null and  
23 void, and not enforceable by any party in any court or  
24 alternative dispute resolution forum, and the creditor or  
25 any subsequent holder of the obligation shall promptly re-

1 turn to the consumer any principal, interest, charges, and  
 2 fees, and any security interest associated with such trans-  
 3 action. Notwithstanding any statute of limitations or  
 4 repose, a violation of this section may be raised as a mat-  
 5 ter of defense by recoupment or setoff to an action to col-  
 6 lect such debt or repossess related security at any time.

7 “(i) VIOLATIONS.—Any person that violates this sec-  
 8 tion, or seeks to enforce an agreement made in violation  
 9 of this section, shall be subject to, for each such violation,  
 10 1 year in prison and a fine in an amount equal to the  
 11 greater of—

12 “(1) 3 times the amount of the total accrued  
 13 debt associated with the subject transaction; or

14 “(2) \$50,000.

15 “(j) STATE ATTORNEYS GENERAL.—An action to en-  
 16 force this section may be brought by the appropriate State  
 17 attorney general in any United States district court or any  
 18 other court of competent jurisdiction within 3 years from  
 19 the date of the violation, and such attorney general may  
 20 obtain injunctive relief.”.

21 **SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR**  
 22 **OPEN END CREDIT PLANS.**

23 Section 127(b)(6) of the Truth in Lending Act (15  
 24 U.S.C. 1637(b)(6)) is amended by striking “the total fi-  
 25 nance charge expressed” and all that follows through the

1 end of the paragraph and inserting “the fee and interest  
2 rate, displayed as ‘FAIR’, established under section 141.”.

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